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Supreme Court, U.S.
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No. 93-1481

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

HEATHER C. HINTON,
Petitioner,
vs.
PACIFIC ENTERPRISES, formerly PACIFIC LIGHTING CORPORATION, as Employer, Plan Administrator, Plan Sponsor and Plan Fiduciary; PACIFIC LIGHTING CORPORATION DISABILITY BENEFIT PLAN; PACIFIC LIGHTING CORPORATION MEDICAL PLAN; PACIFIC LIGHTING CORPORATION DENTAL PLAN; PACIFIC LIGHTING CORPORATION PENSION PLAN; PACIFIC LIGHTING CORPORATION LIFE INSURANCE PLAN; and KATHE R. MOORE,
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTERSTATEMENT OF THE QUESTION PRESENTED FOR REVIEW

Should this Court require the Court of Appeals for the Ninth Circuit to elaborate upon its stated reasons for affirming the District Court's dismissal of one of petitioner's claims under the Employee Retirement Income Security Act of 1974?

TABLE OF CONTENTS

Page

COUNTERSTATEMENT OF THE QUESTION PRESENTED FOR REVIEW. i

TABLE OF AUTHORITIES. ii

STATEMENT OF THE CASE 2

REASONS WHY THE PETITION SHOULD BE DENIED 4

I THE DECISION BELOW DOES NOT RAISE THE QUESTION PRESENTED BY PETITIONER. 4

II THIS CASE DOES NOT PRESENT ANY SPECIAL OR IMPORTANT REASONS FOR GRANTING REVIEW 6

CONCLUSION. 7

TABLE OF AUTHORITIES

Page

Cases

Taylor v. McKeithen (1972)
407 U.S. 191, 32 L.Ed. 2d 648,
92 S.Ct. 1980 6

Federal Statutes

Employee Retirement Income Security Act
of 1974 (ERISA)
section 502 . . . . . 3, 4, 6, 7
section 510 . . . . . 3, 5, 6, 7

State Statutes

California Labor Code
section 132(a) 7

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents Pacific Enterprises, formerly Pacific Lighting Corporation,[1] Pacific Lighting Corporation Disability Benefit Plan, Pacific Lighting Corporation Medical Plan, Pacific Lighting Corporation Dental Plan, Pacific Lighting Corporation Pension Plan, and Pacific

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[1] Pacific Enterprises formerly Pacific Lighting Corporation is the parent company of one subsidiary which is not wholly owned: Southern California Gas Company.

Lighting Corporation Life Insurance Plan, respectfully request that this Court deny the petition for Writ of Certiorari seeking remand to the Court of Appeals for the Ninth Circuit for a further statement of its decision in *Hinton v. Pacific Enterprises*, 5 F.3d 391 (9th Cir. 1993) affirming the dismissal by the District Court for the Central District of California of one of petitioner's claims under the Employee Retirement Income Security Act of 1974 (ERISA).

STATEMENT OF THE CASE

Petitioner Heather Hinton was employed as a paralegal by respondent Pacific Enterprises from 1985 until January, 1988, when she was informed by her supervisor on January 15 that she was being fired. Ten days later she signed a resignation agreement to which she added, in her own handwriting, the following: "By signing this agreement, I understand that I do not give up my rights to seek reimbursement for disability under Worker's Compensation, the Company's disability insurance policy, and the Company's self-insurance, if any, for disability. I also understand that I do not give up my rights to unemployment insurance after my disability ceases."

Petitioner filed this action against Pacific Enterprises and others on May 2, 1991 in state court in California, alleging that she had become disabled nine days before she was told that she was being fired, and that Pacific Enterprises and its agents had fraudulently induced her to sign the resignation agreement to cut off her rights to long term disability benefits and other benefits under employee benefit plans governed by ERISA. The action was removed to federal court.

Petitioner then filed a first amended complaint which added each of the benefit plans as a defendant. The first claim of the first amended complaint was against the benefit plan defendants under section 502 of ERISA, and the second claim was against Pacific Enterprises under section 510 of ERISA.

The District Court first dismissed the section 510 claim, finding in a case of first impression in California that the applicable statute of limitations on a section 510 claim was based upon the statutes applicable to a claim for wrongful termination, which in California could be pleaded either on a tort theory or as a breach of contract. On either theory, the one year statutory period on the tort or the two year statutory period for breach of an oral contract had expired.

It is the District Court's subsequent dismissal of the first claim stated in petitioner's first amended complaint, against the benefit plan defendants under section 502, that is the subject of Ms. Hinton's petition to this Court. The first amended complaint admitted that the disability plan contained a term providing that "[n]o employee shall be eligible to receive Disability Benefits following termination of employment," but contended that because the termination was for the unlawful purpose of cutting off benefits claims, it could not be considered. The District Court dismissed the section 502 claim because the propriety of the termination was no longer an issue upon dismissal of the section 510 claim. Petitioner appealed the dismissal of both her section 502 and her section 510 claims.

Petitioner now contends that the Court of Appeals neither affirmed nor reversed the dismissal of her section 502 claim, and that the failure to decide this issue was such a departure from the accepted and usual course of judicial proceedings that this Court should exercise

jurisdiction and remand the case to the Court of Appeals for its decision on this issue. However, the opinion of the Court of Appeals, at 5 F.3d 393, clearly and concisely states petitioner's section 502 claim and her argument in support of it. The following statement in the opinion of the Court of Appeals, also at 5 F.3d 393, leaves nothing undecided about it: "Hinton appeals the dismissals of her claims. We affirm."

REASONS WHY THE PETITION SHOULD BE DENIED

I

THE DECISION BELOW DOES NOT RAISE THE QUESTION PRESENTED BY PETITIONER

The petition presents the question whether the case should be remanded to the Court of Appeals for a decision affirming or reversing the District Court's dismissal of her section 502 claim. To the contrary, the decision of the Court of Appeals clearly affirmed that dismissal, and properly so.

The opinion of the Court of Appeals states petitioner's section 502 claim as follows:

> "The amended complaint contained three claims. **First**, Hinton sought declaratory relief against the Plans, arguing that she was still eligible for disability coverage. The gist of her argument was that although the disability plan stated that '[n]o employee shall be eligible to receive Disability Benefits following termination of

> employment,' she was not 'terminated' for the purposes of this provision. She reasons that it would be improper to allow 'termination' to encompass situations wherein the employer eliminated the employee solely to avoid ERISA benefits. And, of course, she had a claim pending against Pacific, her former employer, to that effect. The claim against Pacific was reworked as the **second** claim in the amended complaint and sought damages only for a violation of § 510 of ERISA." (footnote omitted) *Hinton v. Pacific Enterprises* 5 F.3d 391, 393 (9th Cir. 1993)

Not surprisingly, the District Court found that ". . . plaintiff's first cause of action fails to state a claim as a matter of law because plaintiff admits that she was terminated and as such, Pacific Lighting Corporation Disability Plan's decision not to provide her disability benefits was entirely consistent with the express language of the disability plan provision as cited by plaintiff." (Excerpt of Reporter's Transcript at appendix E-3 of the Petition).

Given the plain meaning of the plan terms concerning the effect of termination of employment and given petitioner's acknowledgement that she not only had been terminated but also had resigned, petitioner's sole argument before the District Court and in her pleadings was that the termination was "wrongful."

The District Court properly decided, and the Court of Appeals affirmed, that a claim of wrongful termination to prevent or foreclose receipt of ERISA benefits is addressed under a section 510 action. Because

petitioner's section 510 action was foreclosed by the statute of limitations, she was not able to breathe new life into her section 502 claim by relying on allegations of wrongful termination in her claim for benefits against the plan defendants.

II

THIS CASE DOES NOT PRESENT ANY SPECIAL OR IMPORTANT REASONS FOR GRANTING REVIEW

"[T]he courts of appeal should have wide latitude in their decisions of whether or how to write opinions." *Taylor v. McKeithen* (1972), 407 U.S. 191, 195 at fn. 4, 32 L.Ed. 2d 648, 92 S.Ct. 1980. In *Taylor*, the summary reversal by the Court of Appeals of a reapportionment plan imposed by the District Court in a suit challenging the 1970 self-reapportionment of the Louisiana Legislature, warranted this Court's exercise of jurisdiction to grant a petition for writ of certiorari and remand the matter to the Court of Appeals to spell out its reasons. In contrast, the express affirmance of the District Court's dismissal of petitioner's section 510 claim in the Court of Appeals' opinion, does not warrant review by this Court.

The dismissal of the petitioner's section 510 claim established an important precedent. The District Court and the Court of Appeals determined as a matter of first impression which statutes of limitations apply to an action under section 510 of ERISA brought in California. Additionally, the denial of petitioner's motion for reconsideration to the District Court was considered at length by the Court of Appeals, involving issues of whether her workers' compensation claim alleging

retaliatory termination under California Labor Code section 132(a) tolled the running of the statute of limitations for her action under section 510 of ERISA, and issues of waiver and estoppel.

The Court of Appeals properly devoted time and attention in writing its opinion on these issues so as to provide guidance to lower courts and to practitioners. The relative insignificance and lack of precedential value of the decision with respect to petitioner's section 502 claim did not merit the same allocation of judicial resources by the Court of Appeals, and does not merit the review of this Court.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

DATED: April 18, 1994.

Respectfully submitted,

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